

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNIVERSAL PARAGON  
CORPORATION and SUNQUEST  
PROPERTIES, INC.,

Plaintiff(s),

v.

INGERSOLL-RAND COMPANY  
LIMITED, et al.,

Defendant(s).

No. C05-3100 MJJ (BZ)

**ORDER DENYING MOTION  
TO COMPEL**

AND RELATED CLAIMS.

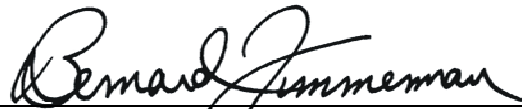
**IT IS HEREBY ORDERED** that defendants' motion to compel third-party Penetone Corporation to respond to the subpoena served September 22, 2006 is **DENIED** on the grounds that it was untimely, discovery having been cut off on August 25, 2006. See NSight, Inc. v. Peoplesoft, Inc., 2006 WL 988807 (N.D. Cal. April 13, 2006). As Union Pacific points out, defendants interposed the August 25, 2006 cutoff in objecting to plaintiff's discovery. To the extent defendants claim that they expected Judge Jenkins to extend the discovery cutoff

1 when the parties filed a stipulation dated October 19, 2006,  
2 it does not appear that Judge Jenkins has signed this  
3 stipulation or that it would apply to the subpoena at issue.

4 That a party may not have standing to object to the  
5 breath of a third-party subpoena does not mean that a party  
6 does not have standing to object to a third-party subpoena  
7 issued in violation of the court's discovery cutoff. Nor do  
8 defendants explain how a third-party served with a subpoena  
9 would necessarily know at the time it must file its objections  
10 that discovery has been cut off. Third-party discovery is to  
11 be conducted with a view to minimizing the burden on the  
12 third-party. Requiring a third-party to obtain counsel to  
13 review the court file to see if the subpoena was issued in  
14 violation of a court order prior to objecting seems  
15 inconsistent with that concept. Nor does it follow that an  
16 agreement to extend the date for filing discovery motions has  
17 the effect of reopening discovery.

18 The court finds no need for argument and vacates the  
19 hearing scheduled for January 10, 2007.

20 Dated: December 22, 2006

21 

22 Bernard Zimmerman  
23 United States Magistrate Judge  
24  
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25: \BZALL\REFS\UNIVERSAL PARAGON\DISC8.ORDER.wpd